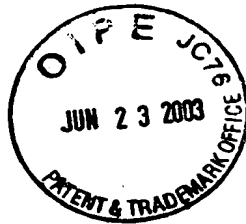199463US0XPCT

IN THE UNITED STATES PATENT & TRADEMARK OFFICE

IN RE APPLICATION OF: :

Bernard DELOBEL.   :

SERIAL NO: 09/674,496   :

FILED: January 11, 2001   :

FOR: USE OF POLYPEPTIDE DERIVED FROM A PA1B
       LEGUME ALBUMEN AS INSECTICIDE

PETITION FOR WITHDRAWAL OF HOLDING OF ABANDONMENT BASED ON TIMELY FILED RESPONSES FILED BY APPLICANT

ASSISTANT COMMISSIONER FOR PATENTS
WASHINGTON, D.C. 20231

SIR:

In accordance with the requirements of M.P.E.P. 711.03(c), Applicants petition to

withdraw the holding of abandonment based on the timely filing of Responses filed by

applicant, including 1) statement from the practitioner stating that although the Office

Communication was received by the practictioner, the Office has indicated the case has been

abandoned without considering the bona fide, good-faith Response filed February 6, 2003, a

copy of the docket record indicating the timely receipt of Office Communications dated

January 6, 2003, as well as a docket record indicating the timely filing of the Response

thereto on February 6, 2003; and 3) copies of all documents timely filed in Response to the

above-mentioned Office Communications, including date-stamped filing receipts

demonstrating the timely filings thereof.

In response to the Notification of Missing Requirements from the Office dated January 6, 2006, providing Applicants one month without any necessary extension fees to respond thereto, Applicants timely filed the enclosed documents on February 6, 2003, as indicated by the date-stamped filing receipt enclosed herewith. This filing is considered timely and a bona fide good faith Response thereto. Even if the Office does not consider the enclosed Response as timely, Applicants' petitioned and authorized the Office to charge a deposit account for any fees necessary under 37 CFR §1.136 for any necessary extensions of time. Accordingly, Applicants timely filed within the statutory time limit provided thereto.

Then, the Office sent Applicants' representative the enclosed copy of a Notification of Defective Response/Abandonment dated April 22, 2003, not only indicating that the Office timely received Applicants Response timely filed February 6, 2003, but surprisingly indicating that the present Application has been held in abandonment as of April 22, 2003. This is very surprising for the following reasons.

1.)   The Response timely filed February 6, 2003, was a bona fide and good faith attempt to correct any error indicated by the Office on the Raw Sequence Listing Error Summary. More specifically, the Office indicated that "respectfully" should be changed to --respectively-- as shown on the attached copy of the Notice dated January 6, 2003. Applicants timely filed a the enclosed copy of the Response dated February 6, 2003, correcting the Sequence Listing as requested by the Office.

2.) The rest of the Sequence Listing is believed to contain no other errors to be corrected by the Response dated February 6, 2003. If the Office is questioning Applicants use of variable regions of Sequences, it should be noted that Applicants timely filed a Sequence Listing with the Response dated February 6, 2003, in accordance with the Office's own suggestions regarding how to properly supply a Sequence Listing containing sequences with variable regions. The Office's attention is directed to error number 5 in the Notices dated January 6, 2003, and April 22, 2003, which are checked by the Office on the Raw Sequence Listing Error Summary. This portion of the Summary clearly indicates that the Office requests Applicants to "Please present the maximum number of each residue having variable length and indicate in the <220>-<223> that some may be missing." As indicated by the text circled by the Office accompanying the Notice dated April 22, 2003, Applicants filed a Sequence Listing on February 6, 2003, that complied with the Office's own suggestions. More specifically, in <223>, Applicants presented the maximum number of each residue having variable length and Applicants indicated that some may be missing, in accordance with the Office's above-mentioned suggestions.

3.) Even if the Response filed February 6, 2003, was not adequate, it truly was a bona fide and good faith attempt to respond to the Notice dated January 6, 2003, because it corrected "respectfully" to --respectively-- and it provided a Sequence Listing in accordance with the Office's own suggestions in the Raw Sequence Listing Error Summary. Further, the Notice indicated that

extensions of time are available under 37 CFR §1.136 which would enable a

Response to the Notice to be filed up to and including July 6, 2003 (see the

enclosed copy of the Notice dated January 6, 2003). Accordingly, even if the

Response is deemed non-responsive, Applicants believe that they were

afforded at least the right to be notified so as to file within the statutory time

period granted by the Notice dated January 6, 2003, and 37 CFR §1.136. This

opportunity was robbed from Applicants by the premature Notice of

Abandonment dated more than one month prior to the statutory time period

granted by the Notice dated January 6, 2003, and 37 CFR §1.136 was to

expire.

In light of the above, Applicants through counsel of record, respectfully request that

any holding of abandonment for the above-identified application be withdrawn and that the

Application immediately be examined on the merits.

The facts concerning this matter are as follows:

Upon receipt of Patent Office mail in this firm, all mail is opened and logged in a

daily mail log, the due date entered in a manual docketing book and entered in the firm

computer docketing system. At the time of entry into the computer, the serial numbers are

checked to ensure that the correct docket number appears on the mail so that the documents

are entered in the correct application in the computer and matched with the correct

application file. Any due dates resulting from the Patent Office mail are also entered in the

computer.

Upon being informed by the Office that the present application has been held in

Abandonment, the computer was checked to determine the current status reflected therein (a

hard copy of the record for the above-identified application is attached herewith). The

computer Actions and Due Date section for the subject application did not show receipt of any Communications/Notices from the Office in addition to those summarized above, nor did it show a current due date for Responding to any Notices other than those that were timely filed as summarized above. The attached computer printout for this application is enclosed for the Office's convenience.
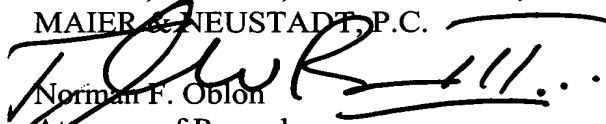
The application file was also pulled and both the front docketing section and the full contents of the file were reviewed. The application file docketing section showed no entry of a Notice was found to be in the file other than those summarized above that were timely responded thereto.

In light of the foregoing explanation and the attached computer printout submitted in support of this request, abandonment of this application is deemed unavoidable due to non-receipt of any additional Notices other than those summarized above that were timely responded thereto in a bona fide good faith manner, and the restoration of this application to the pending files to be examined is earnestly solicited.

The undersigned petition declares further that all statements made herein of his own knowledge and are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of the Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, P.C.

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